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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Paul A Fussell, et al.,

10 Plaintiffs,

11 v.

12 Sun Vista RV Resort LLC, et al.,

13 Defendants.  
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No. CV-24-03414-PHX-KML

**ORDER**

15 On December 4, 2024, plaintiffs Paul A. Fussell and Eilleen Fussell filed their  
16 complaint against defendants Sun Vista RV Resort LLC (“Sun Vista”) and Ronald Thayer.  
17 (Doc. 1.) The Fussells did not serve that complaint but on December 31, 2024, Sun Vista  
18 filed its answer. (Doc. 5.) The court then ordered the parties to develop a Rule 26(f) Joint  
19 Case Management Report and attend a scheduling conference on February 7, 2025. (Doc.  
20 8.)

21 On January 6, 2025, the Fussells filed two documents: a “Notice Regarding  
22 Premature Notice of Appearance” and a “Motion to Strike Defendants’ Premature Filings.”  
23 (Docs. 9, 10.) Those documents argue no defendant has been served and defendants  
24 “cannot bypass service requirements through voluntary appearance.” (Doc. 10 at 2.) The  
25 Fussells state they plan to file an amended complaint and request the court strike Sun  
26 Vista’s answer in order to, among other things, maintain a “clear record.” (Doc. 10 at 3.)

27 In general, “one becomes a party officially, and is required to take action in that  
28 capacity, only upon service of a summons or other authority-asserting measure stating the

1 time within which the party served must appear and defend.” *Murphy Bros. v. Michetti*  
2 *Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). But “a defendant may waive service,”  
3 which Sun Vista appears to have done by filing its answer. *Mayes v. Am. Hallmark Ins. Co.*  
4 *of Texas*, 114 F.4th 1077, 1079 (9th Cir. 2024). The Fussells have not cited, and the court  
5 has not located, any authority stating a defendant cannot file its answer before being  
6 formally served. But in a related context, the Ninth Circuit recently concluded a defendant  
7 need not await service of process before opting to remove a case from state to federal court.  
8 *Id.* The Fussells are correct that service of process is often crucial to the beginning of a  
9 case. But once the Fussells filed their suit, Sun Vista was free to waive service and  
10 immediately begin its defense.

11 Accordingly,

12 **IT IS ORDERED** the Motion to Strike (Doc. 10) is **DENIED**. The deadline for the  
13 parties to file the Rule 26(f) report remains the same and the scheduling conference shall  
14 proceed as scheduled.

15 Dated this 13th day of January, 2025.

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19 **Honorable Krissa M. Lanham**  
20 **United States District Judge**  
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